IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.2568 of 2006(O&M)

DATE OF DECISION: FEBRUARY 6, 2007

Raj Kumar

...PETITIONER

VERSUS

State of Haryana and another

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.Namit Sharma , Advocate,
for the petitioner.
Mr.S.S.Mor, Sr.DAG, Haryana.
Mr.Vikram Singh, Advocate,
for respondent No.2.

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The petitioner has filed this criminal revision against the judgment dated 12.12.2006 passed by the Addl.Sessions Judge, Panipat, whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 4.8.2006 passed by JMIC, Panipat, vide which he has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of six months, has been dismissed.

In this case, a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as `the Act') was filed against the petitioner alleging therein that a cheque of Rs.60,000/- issued by the petitioner in discharge of his liability, was dishonoured and in spite of the notice issued, the amount was not repaid. Hence the complaint was filed. In the said complaint, the petitioner has been convicted as stated above.

Counsel for the petitioner only raised one argument that in this

case the complainant has not proved that the cheque (Ex.C1) was issued by the petitioner in discharge of his liability. Counsel contends that actually the petitioner had issued the said cheque to the complainant as a condition precedent for advancement of a desired loan of Rs.40,000/-, but in spite of number of visits, neither the desired loan was advanced to him nor the cheque in question was returned and the same was subsequently fraudulently misused. Counsel contends that the complainant did not lead any evidence to show when and how the said loan was advanced to the petitioner, therefore, the conviction of the petitioner in the aforesaid complaint is not sustainable.

I do not find any force in this contention of the counsel for the petitioner. Section 118 of the Act provides that until the contrary is proved, there is a presumption of consideration with every negotiable instrument. It lays down that every negotiable instrument, when it has been accepted, indorsed, negotiated or transferred for consideration, there is presumption that it was accepted, indorsed, negotiated or transferred for consideration. Therefore, it will be presumed that the cheque in question was issued for consideration by the accused until and unless the accused/petitioner proves otherwise. In this case, the petitioner did not lead any evidence to rebut the said presumption. In view of these facts, I do not find that the Courts below have committed any illegality or irregularity while convicting the petitioner under Section 138 of the Act and sentencing him to undergo rigorous imprisonment for a period of six months.

Hence, criminal revision is dismissed.

February 6, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE